Supreme Court, U.S.
FILED

No. 04-549 SEP 29 2004

OFFICE OF THE CLERK

In The

Supreme Court of the United States

IN RE EDMUND OROK EDEM,

Petitioner.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

EDMUND OROK EDEM
97 Broad Street
Staten Island, NY 10304
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QUESTIONS PRESENTED

(i) Whether any citizen of the United States or permanent resident living within her borders is above the laws and Constitution of the United States.

(ii) Whether the doctrine of judicial immunity extends to criminal wrongdoing.

(iii) Whether a civil and criminal litigation can be pursued concurrently by an individual and the State respectively, and can the President of the United States or an officer acting on his behalf, refuse to enforce the laws of the land.

(iv) Whether the denial of mandamus by the Court of Appeal does not *ipso facto* confer blanket immunity on criminal wrongdoing which makes the Court an accessory after the fact.

PARTIES INVOLVED

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The Attorney General of the United States

Mrs. Pamela Ise Smith

Mr. Alexander Okon

Mr. Robert Ratanski

Mr. Stewart Weinstein

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OPINION BELOW

The date on which the United States Court of Appeals decided my case was August 3, 2004. A timely petition for reconsideration was denied by the United States Court of Appeals on September 8, 2004.

The Opinions of the United States Court of Appeals appears at Appendices 1 & 2, to the petition and are unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This Court has jurisdiction under United States Const. Art. II & III; 18 U.S.C. § 401(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS

"He shall take care that the laws be faithfully executed." The President, in the exercise of his executive powers under the Constitution, "speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties." The heads of the departments are his authorized assistants in the performance of his executive duties, and their official acts, promulgated in the regular course of business, are presumptively his acts. U.S. Const. Art. II.

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. 28 U.S.C. § 1651(a).

The extraordinary remedy of mandamus is available to compel the performance of an act which the law especially enjoins as a duty resulting from office. 28 U.S.C. § 1361.

Mandates the Attorney General of the United States to enforce all Federal Statutes affecting civil rights. The Code of Federal Regulations, Vol. 1, Part O, Subpart J Sec. 50(a).

Mandates the Attorney General of the United States (a) To prosecute federal crimes not otherwise specifically assigned; and (f) Carry out all criminal litigation and related investigations and inquiries pursuant to all the power and authority of the Attorney General, to enforce the Immigration and Naturalization Act and all other laws relating to the immigration and naturalization of aliens. The Code of Federal Regulations, Vol. I, Part O, Subpart K, Sec. 55.

STATEMENT OF THE CASE

The petitioner reported a series of criminal activities to the Attorney General of the United States, and he has failed to perform his constitutionally mandated duty because of the personalities involved. Constitutional and democratic nations like the United States of America have forever accepted the maxim that every citizen is equal before the law and none is above the law.

Central to the issue brought before this Court is the elementary question – is any citizen of the United States above the laws of the land? This case started as an innocuous family court dispute. During the deliberations, the petitioner noted that judicial officers betrayed their oath of office, acted unconstitutionally and committed criminal

offences. The typical reaction of the society is that it is a simple family court matter which the petitioner is trying to avoid paying. But the United States Constitution and this Court have made clear the absolute right of due process. Falsification of court records by judicial officers to achieve whatever noble aims is a crime. Such a tactic had come to the attention of Justice Brandeis who was attributed with this saying, "To declare in the administration of the country that the end justifies the means – To declare that government may commit crimes in order to secure conviction – will bring terrible retribution."

Mandamus is a stringent and extraordinary remedy that the Courts do not grant lightly. 28 U.S.C. § 1361. In order to obtain one, petitioner must show (i) the presence of a novel and significant question of law; (ii) the inadequacy of other available remedies; and (iii) the presence of a legal issue whose resolution will aid in the administration of justice.[1] The petitioner is asking this Court to examine the elemental issue brought before it to determine if those three elements listed above have not been satisfied. This Court is being asked to exercise its core Article III function to decide cases and controversies.

First this case presents a novel and significant issue. Crimes committed against the Laws and Constitution of the United States are generally investigated and prosecuted by the Attorney General's office. In this situation, the petitioner is alleging criminal conduct by officers of the court along with others. Failure to grant a writ has the deliberate effect of covering up criminal conduct and

[1] *In re United States*, 903 F.2d 88, 89 (2d Cir. 1990), citing *In re Von Bulow*, 828 F.2d 94, 97-100 (2d Cir. 1987).

makes all the officers of the court accessories after the fact. That impugns the integrity of the judicial system.

Second, the Court of Appeals has foreclosed this case being heard on the merits by the District Court[2] by denying its transfer, so there are no other forms of relief available to the petitioner. (See App., infra 1, 2) The petitioner has no alternative remedies capable of effectively protecting his and society's substantial interests. There is an ongoing case in the Eastern District of New York where the petitioner filed a civil suit against the State of New York. That Court has refused to join these officers as co-defendants thereby immunizing them from suit. A civil remedy on its own does not resolve the criminal complaint which depends on the needs of public policy. There is a public policy expectation that there shall be a Rule of Law and the Attorney General of the United States is the chief law enforcement officer of the federal government. *Marshall v. Gibson's Products, Inc. of Plano*, 584 F.2d 668 (5th Cir. 1978).

The duties of the Attorney General in this particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command. *Wilbur v. United States*, 284 U.S. 231 (1931); see *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414, 420 (1931).

In *Clinton v. Jones*, 000 U.S. 95-1853 (1997), argued in this Honorable Court on January 13, 1997, the Court held that "the President, like other officials, is subject to

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[2] The United States District Court has jurisdiction in "an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." See S. Rep. No 1992, 87th Cong., 2d Sess. 2; H. Rep. No. 536, 87th Cong., 2d Sess. 1.

the same laws that apply to all citizens, that no case had been found in which an official was granted immunity from suit." The Supreme Court in *Ex parte Virginia*, 100 U.S. 339 (1880) has traditionally refused to extend immunity to judges charged in criminal wrongdoing. The Court reasoned: "Whether the act done by him was judicial or not is to be determined by its character." There was no situation where the Courts actually blocked judicial deliberation as its being done by the Court of Appeals. The Court of Appeals and the Attorney General of the United States are covering up criminal wrongdoing. *Bracy v. Gramley*, 520 U.S. 899 (1997).

Finally, resolution of this issue will aid in the administration of justice by supporting the words of Brandeis above, thus ensuring that the integrity of the courts are not impugned or tainted, by ensuring that judgments entered in United States courts would not be undermined in foreign courts at point of registration, weeding out of court officers who have betrayed their judicial oaths, and fulfilling the basic tenets of law that every crime carries with it a commensurate retributive and deterrent punishment. This case raises the novel question whether state actors are aware of the central belief in a democratic society that all citizens are equal before the law.

REASONS FOR GRANTING THE WRIT

A. The Attorney General's refusal to perform a ministerial act is a dereliction of duty and could be likened to a touch of gangrene that corrupts the whole body.

Writs of mandamus issue to control the conduct of an officer of government, judicial or administrative, only

when the duty to do the act commanded are clear and definite and involve the exercise of no discretion-that is, when an act is ministerial. The Court of Appeals has refused to comprehend that their action or omission is apposed to the positive and plain legal dogma, that the President of the United States through his Attorney General must perform his duties.

The Fourteenth Amendment of the U.S. Constitution states that all people will have "the equal protection of laws." The Court of Appeals' failure to compel the Attorney General to carry out his legally mandated duties negates this cardinal principle. Western civilization has always anchored its civilization on the rule of law as expressly made clear by one of its robust thinkers.

> *"We said that a single injustice, a single crime, a single illegality, particularly if it is officially recorded, confirmed, a single wrong to humanity, a single wrong to justice and to right, particularly if it is universally, legally, nationally, comodiously accepted, that a single crime shatters and is sufficient to shatter the whole social pact, the whole social contract, that a single legal crime, a single dishonorable act will bring about the loss of one's honor, the dishonor of a whole people. It is a touch of gangrene that corrupts the entire body."*

Charles-Pierre Peguy, Men and Saints, trans. Anne and Julian Green, p. 11 (1944)

B. There is no immunity from investigation and prosecution for criminal misconduct.

Public policy is designed to make the judicial system work.[3] It is not designed to protect judicial officers. Protection of these state actors is incidental. Any immunity so ascribed is not of a personal nature but that of public interest. The Court of Appeals erred in not considering the public interest aspect of protecting society against scoundrels in judicial robes.

There is no absolute judicial immunity for criminal conduct; therefore, the Attorney General has erred in not investigating and prosecuting the parties involved in criminal conduct. Official immunity is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government.[4] If at all it exists in this case, which the petitioner is not conceding, absolute judicial immunity is not immunity from injunction, or from special proceedings such as mandamus and prohibition.

Any defense if any must be by way of affirmative defense pleading and proof of judicial acts. The Court of Appeals should have issued a writ instead of resorting to wishy-washy platitudes. It does disservice to the integrity of the United States judiciary when judicial officers cover up crimes. Judicial officers as state actors are not vested

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[3] Justice is itself the great standing policy of civil society; and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all. Edmund Burke, "Reflections on the Revolution in France," 1790, The works of the Right Honorable Edmund Burke, vol. 3, pp. 438-39 (1899).

[4] *Barr v. Matteo*, 360 U.S. 564, 572-573, 79 S.Ct. 1335, 1340, 3 L.Ed.2d 1434 (1959).

with the sovereign immunity granted to the State itself. See *Rolfe v. State of Arizona*, 578 F.Supp. 987 (D.C. Ariz. 1983); *Kush v. Rutledge*, 458 U.S. 1120, 102 S.Ct. 3508, 73 L.Ed.2d 1382, *affirmed*, 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413, *appeal after remand*, 859 F.2d 732 (1983).

On August 15, 2000, Stewart Weinstein performed his judicial duty. On November 8, 2001, fifteen months later, Stewart Weinstein conspired and forged a court document which was forwarded to the petitioner. This was not a judicial act. Robert Ratanaski is the Clerk of the Court. It was his duty to copy the Order on record as is, and send same to the petitioner on time. If he had done this, he would be immune from suit. By conspiring with Weinstein to delay and then forge another Order to send to the petitioner knowing fully well that the new Order sent out by him which was freshly signed by Weinstein had been altered is not within his job description, 18 U.S.C. § 1506. This is obstruction of justice, 18 U.S.C. § 1509, perjury, 18 U.S.C. § 10019(1)(2), 18 U.S.C. § 1623, wrongful use of government seal, 18 U.S.C. § 1017, and conspiracy to interfere with civil rights, 18 U.S.C. § 241, 42 U.S.C. § 1985(2)(3); these were non-judicial acts, which are made more pungent that it was committed during a court deliberation by judicial officers.[5] *United States v. Debrow*, 346 U.S. 374, 376 (1953).

The Second Circuit has itself recognized this in *United States v. Guang*, 962 F.2d 160, 164 (1992) This view is also consistent with that of this Court in *In re Michael*, 326 U.S. 224, 228 (1945); *Ex parte Hudgings*, 249 U.S. 378, 383

[5] "The cardinal importance that no person should be convicted on the basis of perjury." *Silverman v. United States*, 556 F.2d 659 (2d Cir. 1977); cf. *United States v. Duke*, 50 F.3d 571, 576-77 (8th Cir. 1995).

(1919). It is a fact that the officers did fall foul of 28 U.S.C. (1940 ed.) (Judicial Code 268), derived from the Act of March 2, 1831, Rev. Stat. 725.[6]

Mrs. Pamela Smith and Alexander Okon, are Nigerian scam artists claiming to come from Liberia and have submitted false information to the Immigration and Naturalization Service to that effect. 18 U.S.C. § 1028. They have also submitted a false document to a court of the United States and perjured themselves under oath. 18 U.S.C. § 1623(a)(c)(1); 18 U.S.C. § 10019(1)(2). Smith is currently involved in large scale defrauding of the United States Government through the bilking of the Health Care Service medical equipment program. 18 U.S.C. § 371. They have interfered with interstate trade[7] and have also committed mail fraud. Are these not enough grounds for these persons to be investigated by the Attorney General?

C. Western civilization rests on the bedrock that the law is no respecter of persons.

The United States Court of Appeals failed to exercise its authority in granting the writ and unwittingly became an abettor of criminal misconduct. *Roche v. Evaporated Milk Ass'n.*, 319 U.S. 21 (1943).

Much as civilized society tries to make government officials immune from suit so as not to hamper them in the discharge of their duties, a method of correction of deliberate and criminal wrongdoing is *sine qua non* to also

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[6] See also 18 U.S.C. § 401(1) and (2).

[7] Hobbs Act. Their conduct was defined with specificity prior to violation of this act. 18 U.S.C. § 1951.

prevent government officials from abusing this privilege. A situation where over six judges of the State of New York have refused to correct this criminal act makes it a state doctrine and policy, and if the highest court in the land refuses to act, that would make it a United States policy.

This suit is not about the judicial act of the judge. It is about the criminal act of falsification of court records and perjury. This suit is not about the administrative function of the court clerk, it is about the conspiracy to issue a falsified document, knowing fully well its effect of influencing the outcome of appellate review. In *King v. Love*, 766 F.2d 962, 968 (6th Cir), *cert. denied*, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1988), this Court stated that "although setting bond on an arrest warrant is a judicial act, the act of deliberately misleading the police officer who was to execute the warrant about the identity of the person sought was non judicial." Should an individual so perjured against restrict himself to only seeking civil damages or does the welfare of the greater society not be better served by weeding these rascals out of the hallowed halls of the United States judiciary?[8]

In today's world where citizens of other countries are being made to stand trial in American Courts, the notion that felonious conduct could be committed by judicial officers, threatens the integrity and sanctity of the United States judiciary.

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[8] Offenders owe a debt to society which is paid when the offender is punished.

D. The Court of Appeals refusal to issue mandate *ipso facto* confers immunity for criminal wrongdoing.

In a letter written to Attorney General William H. Moody, in August 1904, *President Theodore Roosevelt noted:*

> *"Of all officers of the government, those of the Department of Justice should be kept most free from any suspicion of improper action on partisan of factional grounds, so that there shall be gradually a growth, even though a slow growth, in the knowledge that the federal courts and the representatives of the federal Department of Justice insist on meting out even handed justice to all."*

The United States of America has consistently shown an historical commitment to the rule of law. This is most profoundly manifested in the Supreme Court's view in – *United States v. Burr*, 25 F. Cas. 187, 190, 191-192 (No. 14,694) (CC Va. 1807), citing *United States v. Nixon*, 418 U.S. 683, 708-09 (1974).[9] Why then is the judicial system covering up federal crimes?

The first principle of justice is equality under the law. The principle that each citizen should receive equal treatment by the legal system of this country enjoys a long tradition of respect. The notion that no one is to be dealt with either in a preferential or prejudiced manner by the police, courts, or other governmental agencies is en shrined in both the Declaration of Independence and the

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[9] That the twofold aim (of criminal justice) is that the guilty shall not escape or innocent suffers. *Berger v. United States*, 295 U.S. 88 (1935).

Constitution. Thomas Jefferson declared "that all men are created equal" in terms of their basic social rights.

CONCLUSION

This Court has traditionally held that ministerial duties are those whose statutes or regulations "specify the precise action that the official must take in each instance."[10] Would the Supreme Court of the United States of America make a categorical statement in the 21st century that the American civilization is not one that tolerates criminal conduct by judicial officers? Would the Supreme Court of the United States of America send a message to felons masquerading under the cover of judicial immunity, that egregious conduct like perjury, obstruction of justice and forgery would not be tolerated by society? Would the Supreme Court of today ascribe to the doctrine succinctly put by one of America's presidents?

> *"If there has been any crime, it must be prosecuted. . . . Counsel will be instructed to prosecute these cases in the courts so that if there is any guilt it will be punished; if there is any civil liability it will be enforced; if there is any fraud it will be revealed; and if there are any contracts which are illegal they will be canceled. Every law will be enforced. And every right of the people and government will be protected."* President Calvin Coolidge, The New York Times, January 27, 1924, p. 1.

[10] *Davis v. Scherer*, 468 U.S. 183, 196 n. 14 (1984).

The plaintiff implores this Court not to allow itself to be tainted with any tinge of a cover up. The Attorney General of the United States should be mandated to investigate and prosecute my allegations. It is trite that if an error or omission is allowed to persist in a court of final resort, it has the lasting effect of becoming a precedent that would forever be binding.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. The Supreme Court of the United States should uphold the principle of absolute equality of all before the law or stand condemned.

Dated this day of September 22, 2004.

Respectfully submitted,

EDMUND OROK EDEM
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(718) 727-3331

E.D.N.Y
03-CV-1220
Gleeson, J.
Bloom, M.J.

MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the ___ Day of ___ Two thousand and four.

(Filed Aug. 3, 2004)

Present:

Hon. John M. Walker, Jr.,
Chief Judge,
Hon. Ralph K. Winter,
Hon. Dennis Jacobs,
Circuit Judges.

In re Edem,

Petitioner, 04-160-op

Petitioner, *pro se*, has filed a petition for a writ of mandamus and a motion for transfer of his petition to the Eastern District of New York. Upon due consideration, it is ORDERED that the mandamus petition and the motion for transfer are DENIED. Petitioner has not shown the presence of a novel and significant question

of law, the inadequacy of other available remedies, or the presence of a legal issue whose resolution will aid in the administration of justice so as to justify mandamus relief. *See In re United States*, 10 F.3d 931, 933 (2d Cir. 1993).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ Lucille Carr

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie
CLERK

Date:	8/11/04
Docket Number:	04-0160-op
Short Title:	In Re: Edmund Orok Edem v.
DC Docket Number:	03-cv-1220
DC:	EDNY (BROOKLYN)
DC Judge:	Honorable John Gleeson

MOTION INFORMATION FORM

(Filed Sept. 7, 2004)

Movant: Edmund Orok Edem, Petitioner Pro Se

	Yes	No
Consent sought from adversary(ies)?	☐	☐
Consent obtained from adversary(ies)?	☐	☐
Is oral argument desired?	☐	☐

ORDER

Before: Hon. John M. Walker, Jr., Hon. Ralph K. Winter, Hon. Dennis Jacobs, *Circuit Judges* IT IS HEREBY ORDERED that the motion for reconsideration be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk

By: /s/ Arthur M. Heller
Arthur M. Heller,
Motions Staff Attorney